

PCI PROFESSIONAL CANNING INDUSTRIES SDN BHD**A****v.****CHENG REALTY SDN BHD**

HIGH COURT MALAYA, JOHOR BAHRU

B

KAMARDIN HASHIM JC

[CIVIL SUIT NO: MT4-22-447-2007]

19 JUNE 2009

LAND LAW: *Sale and purchase of land - Sale and purchase agreement - Part of land surrendered to Government for road reserve - Acquirement by Government not intimated to purchaser - Whether vendor guilty of misrepresentation and non-disclosure - Whether purchaser entitled to a rebate - National Land Code, ss. 131, 200, 201, 202, 203*

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CIVIL PROCEDURE: *Admission - Admission of facts - Sale and purchase of land - Admission by vendor that part of land to be surrendered to Government - Whether purchaser entitled to a rebate - Whether entitled to judgment - Rules of High Court 1980, O. 27 r. 3*

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This was an appeal by the defendant against the decision of the court delivered on 6 May 2009, allowing the plaintiff's application to enter judgment against the defendant pursuant to O. 27 r. 3 of the Rules of the High Court 1980 ('RHC'). The plaintiff as purchaser and defendant as vendor entered into a sale and purchase agreement dated 5 August 2005, ('SPA') whereby the plaintiff would purchase from the defendant freehold property comprising of 285,823.44 sq ft in Tempat Seelong, Senai-Kulai, Johor ("the said land") for a purchase price of RM4,573,175. The full purchase price was paid by the plaintiff since June 2006 thereby completing their transaction. Prior to the execution of the SPA, the defendant however had successfully applied for and obtained a conversion of the said land from agricultural to light industrial on condition that a strip of the said land measuring approximately 0.245 acre be surrendered to the State Authority. The plaintiff, however, claimed that they were not informed of the existence of any requisite condition for the purpose of effecting conversion of the said land. On the other hand, they were claiming that they were induced to enter into an SPA based on the defendant's representation under its terms that there had been no other acquisition or intended acquisition of the said land by the Authorities, save and except for 0.451 acres which was acquired prior to the agreement. The plaintiff further claimed that the defendant, in breach the terms of the SPA, had failed in their obligation to notify the plaintiff of any action by

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A the Authorities to acquire the property or any parts of it pursuant to any relevant legislation. The plaintiff hence *inter alia* claimed for a refund of part of the purchase price amounting to RM170,755.20 representing the value of the surrendered land.

B **Held (allowing the application with costs):**

(1) In order to invoke O. 27 r. 3 of the RHC and enter judgment based on the defendant's admission, the court is duty bound to examine the documents and see if the alleged admissions of fact, whether express or implied, are clear. (para 17)

C (2) In the present case the implication of exhs. TMK1, TMK2, TMK3 and TMK4 is so collectively clear that no other conclusion is possible. TMK4 reveals that the defendant already knew of the surrender of the strip of land to the relevant authority. TMK2 further shows that the defendant's surveyors plan dated 15 August 2005 specifically sets out the surrender for road reserve as 0.696 acre. This was an excess of 0.245 acre which was neither accounted for in the SPA nor disclosed to the plaintiff prior to the completion of the sale and purchase transaction. (para 21)

E (3) Furthermore, the defendant admitted in their affidavit that the endorsement dated 5 December 2005 on the register and issue documents of the titles of the land was for the 'surrender' of the portion of the land and not in respect of 'land acquisition'.
F The defendant also admitted in their affidavit that the surrender of 0.245 acre of land was a condition subsequent to the approval of the conversion of the category of land use under the National Land Code 1965. This gives rise to the conclusion that the defendant had no good title in the said 0.245 acre of land for sale to the plaintiff at the material time. (para 22)

G (4) Based on the above it is just and appropriate for a judgment to be entered against the defendant pursuant to O. 27 r. 3 RHC 1980 for the refund of part of the purchase price amounting to RM170,755.20 representing the value of 0.245 acre from the
H acquired/surrendered land. (para 22)

Case(s) referred to:

Folin & Brothers Sdn Bhd (In Receivership) v. Wong Foh Ling & Ors [1991] 1 CLJ 743; [1991] 2 CLJ (Rep) 609 HC (**refd**)

Golden Approach Sdn Bhd v. Pengarah Tanah Dan Galian [2001] 1 CLJ 755 HC (**refd**)

I *Malacca Precast Concrete Works v. William Jacks & Co (M) Sdn Bhd* [1970] 1 LNS 78 HC (**folld**)

Ng Hee Thoong & Anor v. Public Bank Berhad [1995] 1 CLJ 609 CA (*refd*) A
Ong Gim Huat v. Toh Suan Lin Amy [1992] 1 LNS 40 HC (*refd*)
Tan See Hock v. Development & Commercial Bank Bhd & Anor [1994] 1 CLJ 540 HC (*refd*)

Legislation referred to:

National Land Code, ss. 131, 196, 200(1), 201, 201(4), 202(1), 203(3), 204 B
 Rules of the High Court 1980, O. 27 r. 3

For the plaintiff - Ong Peck Ha; M/s Ong & Ong
For the defendant - Ng Chew Hor; M/s Ng, Fan & Assocs

Reported by Mohammed Tariq Ismail C

JUDGMENT

Kamardin Hashim JC: D

Preamble

[1] This is an appeal by the defendant against the decision of this court delivered on 6 Mei 2009, allowing the plaintiff's application to enter judgment against the defendant pursuant to O. 27 r. 3 of the Rules of the High Court 1980 (the Rules). E

Background

[2] By a sale and purchase agreement dated 5 August 2005 made between the plaintiff as purchaser and the defendant as vendor, the plaintiff agreed to purchase and the defendant agreed to sell all that freehold property comprising of 285,823.44 sq. ft. (2.8379 hectare) known as GM 1197 (formerly EMR 2678) Lot 248, Tempat Seelong, Senai-Kulai, Johor ('the said land') for a purchase price of RM4,573,175 upon the terms and conditions contained therein. The plaintiff has paid the full purchase price since June 2006 and completed the said sale and purchase transaction. F G

[3] Unknown to the plaintiff, a strip of land measuring some 0.245 acre ('the said strip of land') had previously and prior to the execution of the SPA been required of the defendant to be surrendered to the state authority, for the south-easterly road widening purposes in furtherance of the defendant's application to convert the said land from agriculture to light industrial land. H

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- A [4] The defendant had successfully obtained the conversion of the said land from agriculture to light industrial without notifying the plaintiff of any existing requisite conditions for the purpose of effecting conversion of the said land from agriculture to light industrial land.
- B [5] Pursuant to cl. 7.01 of the SPA, the defendant had made representation to the plaintiff that save and except for the 0.451 acre which had been compulsorily acquired prior to 5 August 2005 (prior to the execution of the SPA), there has been no other acquisition or intended acquisition of the said land or part thereof
- C by the authorities as at the date of the SPA. Due to the said representation, the plaintiff was induced to enter into the SPA without making any provision in the SPA for abatement or reduction in the purchase price regarding the said strip of land.
- D [6] It was agreed by parties pursuant to cl. 7.02 of the SPA that the defendant undertakes to notify the plaintiff in writing in the event of any governmental, statutory, urban or municipal competent authority acquiring or exercising any rights or taking any steps under the Land Acquisition Act 1960 and/or any other relevant legislation to acquire the said property or any part thereof for any
- E purpose whatsoever between the date of this agreement and the completion date or the extended period. However, the defendant did not do so in the instant case.
- F [7] The plaintiff only discovered the said breach of undertaking in January 2007 or thereabouts in the course of erecting a factory over the said land. Therefore the plaintiff claims that the defendant has breached cl. 1.01 and/or s. 1.2.3 of the Fourth Schedule and cl. 7.02 of the SPA in view of the said surrender of that strip of land to the relevant authority prior to the completion of the sale
- G and purchase transaction. The defendant failed to inform the plaintiff of the requisite terms and conditions imposed by the relevant authority pursuant to s. 1.2.3 of the Fourth Schedule regarding the said requirement to surrender the said strip of land to the state authority.
- H [8] The plaintiff is claiming *inter alia*, for a refund (or rebate) of part of the purchase price, amounting to RM170,755.20, representing the value of the acquired/surrendered land involving 0.28166 hectare/0.245 acre (10,672-20 sq. ft.) which took place after the execution of the SPA dated 5 August 2005 but before the
- I completion date whilst the defendant was still the registered owner of the said land.

The Defendant's case

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[9] The defendant's case is as follows:

- (1) The defendant denied the acquisition of that strip of land comprising of an area of 10,672-20 sq. ft.
- (2) The defendant submits that land can only be acquired pursuant to the Land Acquisition Act 1960.
- (3) The defendant stated in its affidavit that what had transpired was not that the land was acquired but a portion of the land had been surrendered to the relevant authorities as part of the condition when the relevant authority approved the conversion of Lot 248.
- (4) There was never any acquisition of land by any authority. This is clear since the plaintiff had not produced any gazette or other notices issued under the Land Acquisition Act to support their allegations that there had been an acquisition of land.
- (5) Once it is established that there was no acquisition of any part of Lot 248 by the State Authority, the fact upon which the application is based on disappears and with it the basis of the application.
- (6) Therefore, the application should not have been made and should be dismissed.

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The Law

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[10] Order 27 r. 3 of the Rules provides as follows:

Where admissions of facts are made by a party to a cause or matter either by his own pleadings or otherwise, any other party to the cause or matter may apply to the Court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may give judgment, or make such order, on the application as it thinks just. An application for an order under this rule may be made by summons. (emphasis added)

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[11] As to the meaning of 'or otherwise' found in that rule is explained by Zakaria Yatim FCJ (as he then was) in the case of *Folin & Brothers Sdn Bhd (In Receivership) v. Wong Foh Ling & Ors* [1991] 1 CLJ 743; [1991] 2 CLJ (Rep) 609 where at p. 744 (p. 610), his Lordship said:

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- A Under the rule, the admission may be made in the pleadings or otherwise. The words 'or otherwise' include an admission made by letter stating facts which show that the defendant has no defence to the action, *Ellis v. Allen* [1914] 1 Ch 905.

The Admission

- B [12] Issue: Whether the defendant had admitted in any of its documents that the land was surrendered after the SPA was executed on 5 August 2005 but before the completion date.
- C [13] The various documents exhibited in the affidavits such as exh. TMK1, TMK1B and TMK2 shows that that strip of land been surrendered to the state authority and the said surrender was endorsed on the issue document of title.
- D [14] Exhibit TMK1 (the SPA) enclosed a plan of the said land in Annexure 1 which shows the first land acquisition involving the area marked in green in the size of an 'I'. Clause 17.02 of the SPA states that 'Annexure 1 shall be taken, read and construed as an essential part of this agreement. Pursuant to cl. 7.01 of the SPA the area marked in green as identified in the Plan annexed as
- E Annexure 1 comprises of an area of 0.451 acre which had been acquired by the state authority. Subsequently, after payment of balance purchase, the plaintiff discovered that another 0.245 acre was surrendered by the defendant to the state authority of which the plaintiff was not informed.
- F [15] The defendant's Land Surveyor's Plan by Messrs Quek Tee Kim and Rakan-Rakan Sdn Bhd prepared on 15 August 2005 (exh. TMK2) shows the area acquired by the state authority is marked in red in the shape of an inverted 'L' which is bigger than the 'I' shape in TMK1 ie, the first land acquisition. Further the
- G note at the bottom left of the Plan specifies as follows:

Nota:

- | | |
|------------------------------|------------|
| Keluasan Asal Lot 248 | 7.012 Ekar |
| Penyerahan Untuk Rizab Jalan | 0.696 Ekar |
| H Baki Keluasan Lot | 6.316 Ekar |

- I [16] Further, exh. TMK3 shows that the plaintiff was the registered owner after 6 April 2007. Exhibit TMK4 is a land search done on 10 May 2006 which shows that the defendant was still the registered owner on 10 May 2006. The land search also shows that the endorsement of the First land acquisition was made in 1998 and

there is also an endorsement of approval for surrender of a portion of land measuring approximately “kurang 0.28166 hektar (kelulusan serahbalik sebahagian tanah seluas lebih kurang 0.28166 hektar)” registered on 5 December 2005.

[17] Considering the above facts gleaned from the documentary evidence exhibited in the various affidavits filed in respect of this application, can it be said that there was a clear admission on the part of the defendant which would enable this court to invoke O. 27 r. 3 of the RHC? It must be remembered that the jurisdiction of the court under this rule is discretionary. Assuming that this court can entertain the plaintiff’s application for judgment on the defendant’s implied admission in the documents exhibited in the affidavit, the court is then duty bound to examine the documents and see if the alleged admissions of fact are clear. The Supreme Court Practice 1991 at p. 488 under ‘Admissions of fact’ says that such admission may be express or implied but they must be clear. (*Ong Gim Huat v. Toh Suan Lin Amy* [1992] 1 LNS 40)

[18] In *Malacca Precast Concrete Works v. William Jacks & Co (M) Sdn Bhd* [1970] 1 LNS 78, the admission relied upon is contained in a letter dated 12 July 1968 from Mr JK Tan, advocate and solicitor, enclosing a cheque for \$10,000 “towards the debt owed by my clients.” The full terms of this letter are as follows:

J.K. Tan 117, Jalan Hang Jebat.

Advocate & Solicitor, Malacca.
Our Ref: TJK/L/13/68/J. 12th July, 1968.
Your Ref: TA/RB/CL/172/67.
Ms. Tay Leong Siak & Co.,
Malacca.

Dear Sirs,

Re: Malacca High Court C.S.
No. 204 of 1967.
William Jacks & Co. (M) Sdn. Bhd.
vs.
Malacca Precast Concrete Works.

With reference to your letter of 12th July, 1968 I enclose herewith my cheque for \$10,000 towards the debt owed by my clients.

Would you, please acknowledge receipt.

Yours faithfully,
Sd. J.K. Tan.

A [19] The Federal Court in this case held that:

On the remaining question whether the letter from Mr. J. K. Tan amounts to an admission of liability to pay the sum claimed by the plaintiffs, I have no doubt that Sharma J. was right in his conclusion that it was such an admission. The implication of the letter is so clear

B that no other conclusion is possible.

[20] In the above case, there is no direct admission as to the actual sum owing to the plaintiff by the defendant. All that letter says was that a cheque for \$10,000 is enclosed with the letter as payment towards the debt owed by the client. Similarly, in the present case, there is no direct admission by the defendant that the said strip of land measuring 0.245 acre was surrendered to the state authority prior to the execution of the SPA and that the value for that portion of the land should be abated from the agreed purchase price.

D [21] However, the implication of these exhs. TMK1, TMK2, TMK3 and TMK4 collectively is so clear that no other conclusion is possible. From TMK4, the defendant already knew of the surrender of the said strip of the land to the relevant authority. In fact, the defendant knew of the existence of this surrender as far back as 15 August 2005 based on the defendant's own Surveyors Plan in exh. TMK2 which was dated 15 August 2005 which specifically sets out the surrender for road reserve is 0.696 acre (penyerahan untuk rizab jalan = 0.696 ekar). Clause 7.01 of the SPA only states that 0.451 acre was acquired by the relevant authority in 1998. So, there was an excess of 0.245 acre which was not revealed in the SPA and was neither disclosed to the plaintiff before the completion of the sale and purchase transaction.

G [22] In addition thereto, the defendant admitted at para. 9 of its affidavit in reply affirmed by Alan Cheng Poh Ang on 4 August 2008 that the endorsement dated 5 December 2005 was for the 'surrender' of the portion of the land and not in respect of 'land acquisition' and further at para. 13 the defendant admitted that the surrender of the 0.28166 hectare of land was a condition subsequent to the approval of the conversion of the category of land use under the National Land Code 1965. This gives rise to the conclusion that the defendant had no good title in the said .028166 hectare/ 10,672-20 sq. ft. for sale to the plaintiff at the material time. In the circumstances, it is just and appropriate for a judgment be entered against the defendant pursuant to O. 27 r. 3 of the Rules of High Court 1980 for the refund of part of the purchase price, amounting to RM170,755.20, representing the value of the acquired/surrendered land involving 0.28166 hectare/0.245 acre (10,672-20 sq. ft.).

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Whether Plaintiff Has Knowledge

[23] One other issue that this court ought to consider is whether the plaintiff knew all along ie, prior to or during or before the completion of the sale and purchase transaction that the said strip of land was surrendered by the defendant to the relevant authority as stated by the defendant in its affidavit in reply in encl. 46 at para. 16. The plaintiff by its affidavit in encl. 49 had denied this at para. 8. The plaintiff averred that if the plaintiff had known of the existence of the 'second land acquisition' prior to the completion of the sale and purchase transaction, the plaintiff would have brought up its rights under cl. 7.02 (a) or (b) of the SPA (TMK1) at the material time as well as before making the full payment of the balance purchase price to the defendant.

[24] Further, at para. 3.4 of the same affidavit had averred that not only did the defendant fail to inform the plaintiff about the said "second land acquisition" or surrender concerning 0.28166 hectare at the material time, the defendant and/or its solicitors had failed to furnish to the plaintiff documents which would have revealed the said second land acquisition or surrender despite letters written by Ong & Ong (the plaintiff's solicitors) to Azizuddin Kwang & Co for the same ie,

- i) Letter dated 26 Augst 2005 – to furnish Borang 12B (exh. A3 p. 6 of encl. 46)
- ii) Letter dated 30 August 2005 – to furnish a copy of the survey plan of the said property (exh. A3 p. 7 of encl. 46)
- iii) Letter dated 5 May 2006 – to have sight of the endorsement on the title deed showing the change of usage of land to light/medium industries as per your client's conversion application (exh. A3 p. 32 of encl. 46)

[25] The defendant did not reply to this thereby rendering the same being admitted by the defendant. In evaluating affidavit evidence, the failure of the defendant to explain or contradict the plaintiff's positive assertion can be treated as an admission of the fact so asserted. (See *Ng Hee Thoong & Anor v. Public Bank Berhad* [1995] 1 CLJ 609). After all the burden is on the defendant as the Vendor to give full and fair disclosure of the said surrender if it existed at the material time. Therefore, the plaintiff cannot be faulted in the circumstances of the present case and it is only fair that the plaintiff should be entitled for the refund of the purchase paid for the surrendered 0.245 acre.

A Calculation Of Purchase Price

[26] For the purpose of the present application under O. 27 r. 3 of the Rules of the High Court 1980, the method of calculation of the purchase price becomes relevant. The defendant states in its amended statement of defence at para. 2 that the method of calculation of the purchase price is not relevant given the fact that the plaintiff and defendant had agreed to a fixed purchase price for the sale of the said land. However, contrary to this statement, the defendant's own document in exh. TMK1B suggest otherwise. The letter dated 15 June 2005 by the defendant's solicitors (Azizuddin, Kwang & Co) as in exh. TMK1B speaks for itself. This letter reveals the method of the computation of the purchase price at RM16 per sq. ft. with the area of the said land of 285,823.44 sq. ft. For ease of reference the contents of the said letter is reproduced below as follows:

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M/s Ong & Ong Advocates & Solicitors Suite 805, 8th Floor City Plaza, Jalan Tebrau 80250 Johor Bahru	Subject To Contract Attn. Mrs Ong Peck Ha
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Dear Sir,

Re: Sale and Purchase Agreement

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Property : Geran Mukim 1197 Lot 248, Tempat Seelong
Mukim Senai-Kulai, Daerah Kulai, Negeri Johor

Land Area : 2.8379 Hectare less 0.451 acres

Purchase Price : RM16.00 per sq. ft

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Vendor : Cheng Realty Sdn Bhd

Purchaser : P.C.I. Professional Canning
Industries Sdn Bhd (687573-d)

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The above matter and your letter dated 12th May 2005 refer.

Enclosed herewith is the second draft of the Sale and Purchase Agreement incorporating your various amendments for your attention and approval.

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With regard to the mathematical calculation of the purchase price, it is computed as follows:

1. Land area as per the title	2.8379 Hektar	=	305,469.00 sq. ft.	A
Less acquisition	0.451 Ekar	=	19,645.56 sq. ft.	
			<u>285,823.44 sq. ft.</u>	

2. At RM16-00 per sq. ft.

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RM (285,823.44 x 16.00) = RM4,573,175.00

Kindly also take note of our new file reference and to quote them in all your correspondences to us.

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Kindly let us have your approval soonest possible.

Yours faithfully,

-sgd-

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c.c. client

[27] Again in exh. TMK1 ie, the sale and purchase agreement dated 5 August 2005, the purchase price of RM4,573,175 is stated in Section II of the Third Schedule of the SPA. All these clearly points to the fact that the purchase price was arrived at by multiplying the agreed price per square foot (RM16) with the area of the said land ie, RM16 x 285,823.44 sq. ft. which amounts to RM4,573,175.

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Issue: Whether Land Can Only Be Acquired Pursuant To Land Acquisition Act 1960?

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[28] The defendant here merely denies that there ever existed any land acquisition. The defendants submitted that 'surrender of land' and 'land acquisition' involves two distinct procedures one under the Land Acquisition Act 1960 and the other under the National Land Code 1965. The defendant further submits that under the Malaysian law, land can only be acquired pursuant to Land Acquisition Act 1960 which prescribes a specific procedure by which land can be acquired. I have considered the submission by the learned counsel for the defendant and I'm constrained to hold otherwise. Besides the Land Acquisition Act 1960, there are other legislations which provides for the land to be acquired by the state authority such as that provided for under the National Land Code eg, s. 196 – s. 204 which sets out the procedure for surrender of land.

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A The Surrender Of Land

[29] According to the defendant, what had transpired was not that the land had been acquired but that a portion of the land had been surrendered to the relevant authorities as part of the condition for conversion of the said lot 248 from agriculture to Industry.

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[30] Section 200(1) of the National Land Code provides that “any application for approval by a proprietor wishing to surrender a part only of the land comprised in his title shall be made in writing to the Land Administrator in Form 12B, and shall be accompanied by ... ”

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[31] In the present case, the surrender of the land in question was made pursuant to s. 200 of the National Land Code. This is evident in the letter from Pentadbir Tanah Johor Bahru dated 10 August 2005 (exh. TMK5) where it states as follows at para. 3 of the said letter:

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Pihak tuan juga diharapkan dapat memajukan Borang 12B untuk penyerahan tanah yang terlibat dengan rizab jalan sebagaimana dalam ulasan jabatan teknikal yang dilampirkan.

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[32] Further, s. 201 states:

(4) On approving, or being informed by the State Director that he has approved, the surrender, the Land Administrator shall:

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(a) revise (by reference to the estimated area of the part to be retained) the rent payable by the proprietor;

(b) notify the proprietor of the approval and the revised rent; and

(c) make, or cause to be made, a memorial of the surrender on the register and issue documents of title to the land.

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[33] The above is clearly reflected in the Form 5DK ie, the land title whereby it states as follows:

No. Pers 335/2005 Kelulusan serahbalik sebahagian tanah seluas lebih kurang 0.28166 Hektar

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Cukai tanah dipinda kepada RM4,320.00

Didaftarkan pada 05 Disember 2005 jam 08:05:53 pagi

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[34] Therefore it is clear that the surrender in the present case was approved and registered as shown above and the said surrender was made pursuant to s. 200 of the NLC. This was not a case of surrender and re-alienation of land pursuant to s. 203 NLC whereby an application has to be made in the prescribed form 12C.

[35] Section 203(3) of the NLC provides as follows:

- (3) Any proprietor wishing to apply for an approval pursuant to this section shall do so in Form 12C; and the provisions of sections 197 to 199 shall apply to the application subject to the modifications specified in subsection (4), and to such other modifications as may be necessary.

[36] Therefore the effect of surrender under s. 200 NLC is that the land reverts to state authority as state land and may be disposed off at will by the state authority. In *Golden Approach Sdn Bhd v. Pengarah Tanah Dan Galian* [2001] 1 CLJ 755 it was held:

... while it is true that generally speaking, on a surrender of land under s. 197 NLC, it reverts to state land and may be disposed off at will by the state authority, each case must be decided according to its own particular facts. In this case, the director had offered to re-alienate the said lands back to Ulu Behrang on the terms and conditions set out in his letter of 23 January 1996 and such offer had been accepted. Therefore, on their surrender, although the said lands vested in the State Authority as State land, they were not available for disposal at will as contended by learned Senior Federal Counsel but had to be treated as being approved for re-alienation in sub-divisional lots: a position no different than a surrender under s. 204 Band s. 204G NLC; ... The difference between a surrender of land for subdivision under s. 197 and s. 204G NLC seems to be this: on a surrender under s. 204G(2), the land reverts to the state authority as state land but is to be treated as approved for re-alienation in sub-divisional lots on the terms indicated by the state authority under s. 204E, whereas under s. 197, there is no such built in "treating" of the land as approved for re-alienation in sub-divisional lots.

[37] In the present case, there was no evidence admitted by the defendant to indicate that the surrender of the land in question was for the purpose of re-alienation to the plaintiff or the defendant itself. In fact exh. TMK5 clearly shows that the surrender of a portion of land to the State authority was made for road reserve. Further, the endorsement on the issue document of title clearly shows that the approval was granted by the state authority for the said surrender and therefore the requirement under s. 201(4) of the NLC was complied with. Further, the defendant themselves admitted that a portion of the land had been surrendered to the relevant authorities as part of the condition for conversion of the said lot 248 from agriculture to industry. Therefore, it is undeniable that the surrender of the portion of land was made pursuant to s. 200 of the NLC.

- A [38] The learned counsel for the defendant submitted at length the procedure for acquisition of land pursuant to the Land Acquisition Act 1960. It was quite right for the defendant to submit that there was never any acquisition of land by any authority under the Land Acquisition Act 1960 after the 1st land acquisition on 3 April 1998.
- B Be that as it may, the existence of the surrender of land in the instant case cannot be overlooked. Now the question is what is the effect of this surrender registered on 5 December 2005? Clearly the position is borne in s. 202(1) of the NLC where it states as follows:

C **Section 202. Re-vesting of part surrendered, and re-survey of part retained**

- (1) Upon the making of any memorial pursuant to sub-section (4) of section 201, the part in question shall revert to and vest in the State Authority as State land; and the provisions of paragraphs (a) and (b) of section 131 shall apply as if the part had reverted pursuant to a forfeiture.
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[39] For purpose of clarity, s. 131 of the NLC is reproduced as follows:

E **Section 131. Effects of forfeiture**

Upon the taking effect in relation to any land of any forfeiture under this Act:

- (a) the land shall revert to, and vest in, the State Authority as State land, freed and discharged from all titles and interests subsisting or capable of arising immediately before the forfeiture took effect;
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- (b) there shall also vest in the State Authority, to the extent specified in section 47 and without payment of compensation, any buildings then existing on the land; and
- (c) any item of land revenue then due to the State Authority in respect of the land shall be extinguished.
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[40] From the foregoing provisions, it appears to me that once the land is surrendered to the state authority pursuant to s. 200, the land then shall revert to and vest in the state authority as state land, freed and discharged from all titles and subsisting interest.

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[41] In *Tan See Hock v. Development & Commercial Bank Bhd & Anor* [1994] 1 CLJ 540, James Foong J held as follows:

- ... the procedure adopted by the state of Johor for sub-division of any land is by way of surrender and re-alienation of the land under s. 195 of the NLC. Upon such surrender, the land reverts back and vests in the state authority as state land under s. 199 of the NLC. Only after
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this process is completed is the land once again alienated by the state to the original proprietor in sub-divided form. When this happens (the surrender and re-alienation), the said land has the effect of being forfeited under s. 131 of the NLC ... When the land is forfeited by the state, the land is 'freed and discharged from all titles and interests subsisting or capable of arising immediately before the forfeiture took effect'. This is so provided under s. 131(a) of the NLC.

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[42] The court went further to hold:

This therefore extinguishes the 'interest' of the first defendant which had a first legal charge over CT 17031. Subsequently, when the said land was alienated by the state to Bantar with individual sub-divided documents of title, these titles were free from encumbrances such as first legal charges. The interest of the first defendant can only exist if there are first legal charges registered over them. However, as there are none, the first defendant cannot seek protection under s. 340 of the NLC.

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[43] In the instant case, the application to surrender the portion of the land was not for sub-division, instead the land was surrendered for road reserve as referred to in exh. TMK5. Given the fact that the defendant themselves had admitted that a portion of the land had been surrendered to the relevant authorities as part of the condition for conversion of the said Lot 248 from agriculture to Industry, therefore, the said portion of land will not be re-alienated to the original owner ie, the plaintiff in this case. In the circumstances, the land is forfeited by the State authority (s. 131 of the NLC), and thus the land is freed and discharged from all titles and interests subsisting or capable of arising immediately before the forfeiture took effect.

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[44] In the present case, the SPA was entered into by the plaintiff and the defendant on 5 August 2005 and subsequently the land was registered under the plaintiff's name on 6 April 2007. On 10 August 2005, the Land Administrator's office sent a letter to the defendant directing the defendant to submit Form 12 B (the surrender application). From the documents made available by the parties herein, it cannot be determined when the defendant had made the application for surrender in Form 12B but the application was approved and the Land Administrator had caused to be made, a memorial of the surrender on the register and issue documents of title to the land which according to the endorsement was registered on 5 December 2005. The defendant admitted at para. 9 of its affidavit in reply affirmed by Alan Cheng Poh Ang on 4 August

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A 2008 that the endorsement dated 5 December 2005 was for the ‘surrender’ of the portion of the land and not in respect of ‘land acquisition’.

B [45] Therefore, it is evident that the surrender took place when the defendant was still the registered owner of the land in question. Further, upon the surrender, the land was vested with the State Authority as State land, freed and discharged from all titles and interests subsisting or capable of arising immediately before the forfeiture took effect. In view of this, the defendant couldn’t possibly transfer to the plaintiff the portion of the land to which it had no good title.

C [46] For the aforesaid reasons, I allow the plaintiff’s application with costs.

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